

By: Representatives Currie, Ford

To: Education

HOUSE BILL NO. 750

1 AN ACT TO AMEND SECTIONS 37-13-91 AND 37-151-5, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE PERCENTAGE REQUIRED FOR STUDENTS TO BE
3 IN SCHOOL FOR THE INSTRUCTIONAL DAY IN ORDER TO BE ACCOUNTED FOR
4 IN THE AVERAGE DAILY ATTENDANCE FOR DETERMINING UNLAWFUL ABSENCES
5 AND LEVEL OF FUNDING UNDER MAEP FROM 63% TO 50% IN COMPLIANCE WITH
6 PROVISION OF THE EVERY STUDENT SUCCEEDS ACT (ESSA); AND FOR
7 RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 37-13-91, Mississippi Code of 1972, is
10 amended as follows:

11 37-13-91. (1) This section shall be referred to as the
12 "Mississippi Compulsory School Attendance Law."

13 (2) The following terms as used in this section are defined
14 as follows:

15 (a) "Parent" means the father or mother to whom a child
16 has been born, or the father or mother by whom a child has been
17 legally adopted.

18 (b) "Guardian" means a guardian of the person of a
19 child, other than a parent, who is legally appointed by a court of
20 competent jurisdiction.



21 (c) "Custodian" means any person having the present
22 care or custody of a child, other than a parent or guardian of the
23 child.

24 (d) "School day" means not less than five and one-half
25 (5-1/2) and not more than eight (8) hours of actual teaching in
26 which both teachers and pupils are in regular attendance for
27 scheduled schoolwork.

28 (e) "School" means any public school, including a
29 charter school, in this state or any nonpublic school in this
30 state which is in session each school year for at least one
31 hundred eighty (180) school days, except that the "nonpublic"
32 school term shall be the number of days that each school shall
33 require for promotion from grade to grade.

34 (f) "Compulsory-school-age child" means a child who has
35 attained or will attain the age of six (6) years on or before
36 September 1 of the calendar year and who has not attained the age
37 of seventeen (17) years on or before September 1 of the calendar
38 year; and shall include any child who has attained or will attain
39 the age of five (5) years on or before September 1 and has
40 enrolled in a full-day public school kindergarten program.

41 (g) "School attendance officer" means a person employed
42 by the State Department of Education pursuant to Section 37-13-89.

43 (h) "Appropriate school official" means the
44 superintendent of the school district, or his designee, or, in the
45 case of a nonpublic school, the principal or the headmaster.



46 (i) "Nonpublic school" means an institution for the
47 teaching of children, consisting of a physical plant, whether
48 owned or leased, including a home, instructional staff members and
49 students, and which is in session each school year. This
50 definition shall include, but not be limited to, private, church,
51 parochial and home instruction programs.

52 (3) A parent, guardian or custodian of a
53 compulsory-school-age child in this state shall cause the child to
54 enroll in and attend a public school or legitimate nonpublic
55 school for the period of time that the child is of compulsory
56 school age, except under the following circumstances:

57 (a) When a compulsory-school-age child is physically,
58 mentally or emotionally incapable of attending school as
59 determined by the appropriate school official based upon
60 sufficient medical documentation.

61 (b) When a compulsory-school-age child is enrolled in
62 and pursuing a course of special education, remedial education or
63 education for handicapped or physically or mentally disadvantaged
64 children.

65 (c) When a compulsory-school-age child is being
66 educated in a legitimate home instruction program.

67 The parent, guardian or custodian of a compulsory-school-age
68 child described in this subsection, or the parent, guardian or
69 custodian of a compulsory-school-age child attending any charter
70 school or nonpublic school, or the appropriate school official for



71 any or all children attending a charter school or nonpublic school
72 shall complete a "certificate of enrollment" in order to
73 facilitate the administration of this section.

74 The form of the certificate of enrollment shall be prepared
75 by the Office of Compulsory School Attendance Enforcement of the
76 State Department of Education and shall be designed to obtain the
77 following information only:

78 (i) The name, address, telephone number and date
79 of birth of the compulsory-school-age child;

80 (ii) The name, address and telephone number of the
81 parent, guardian or custodian of the compulsory-school-age child;

82 (iii) A simple description of the type of
83 education the compulsory-school-age child is receiving and, if the
84 child is enrolled in a nonpublic school, the name and address of
85 the school; and

86 (iv) The signature of the parent, guardian or
87 custodian of the compulsory-school-age child or, for any or all
88 compulsory-school-age child or children attending a charter school
89 or nonpublic school, the signature of the appropriate school
90 official and the date signed.

91 The certificate of enrollment shall be returned to the school
92 attendance officer where the child resides on or before September
93 15 of each year. Any parent, guardian or custodian found by the
94 school attendance officer to be in noncompliance with this section
95 shall comply, after written notice of the noncompliance by the



96 school attendance officer, with this subsection within ten (10)
97 days after the notice or be in violation of this section.
98 However, in the event the child has been enrolled in a public
99 school within fifteen (15) calendar days after the first day of
100 the school year as required in subsection (6), the parent or
101 custodian may, at a later date, enroll the child in a legitimate
102 nonpublic school or legitimate home instruction program and send
103 the certificate of enrollment to the school attendance officer and
104 be in compliance with this subsection.

105 For the purposes of this subsection, a legitimate nonpublic
106 school or legitimate home instruction program shall be those not
107 operated or instituted for the purpose of avoiding or
108 circumventing the compulsory attendance law.

109 (4) An "unlawful absence" is an absence for an entire school
110 day or during part of a school day by a compulsory-school-age
111 child, which absence is not due to a valid excuse for temporary
112 nonattendance. For purposes of reporting absenteeism under
113 subsection (6) of this section, if a compulsory-school-age child
114 has an absence that is more than * * * fifty percent (50%) of the
115 instructional day, as fixed by the school board for the school at
116 which the compulsory-school-age child is enrolled, the child must
117 be considered absent the entire school day. Days missed from
118 school due to disciplinary suspension shall not be considered an
119 "excused" absence under this section. This subsection shall not
120 apply to children enrolled in a nonpublic school.



121 Each of the following shall constitute a valid excuse for
122 temporary nonattendance of a compulsory-school-age child enrolled
123 in a noncharter public school, provided satisfactory evidence of
124 the excuse is provided to the superintendent of the school
125 district, or his designee:

126 (a) An absence is excused when the absence results from
127 the compulsory-school-age child's attendance at an authorized
128 school activity with the prior approval of the superintendent of
129 the school district, or his designee. These activities may
130 include field trips, athletic contests, student conventions,
131 musical festivals and any similar activity.

132 (b) An absence is excused when the absence results from
133 illness or injury which prevents the compulsory-school-age child
134 from being physically able to attend school.

135 (c) An absence is excused when isolation of a
136 compulsory-school-age child is ordered by the county health
137 officer, by the State Board of Health or appropriate school
138 official.

139 (d) An absence is excused when it results from the
140 death or serious illness of a member of the immediate family of a
141 compulsory-school-age child. The immediate family members of a
142 compulsory-school-age child shall include children, spouse,
143 grandparents, parents, brothers and sisters, including
144 stepbrothers and stepsisters.



145 (e) An absence is excused when it results from a
146 medical or dental appointment of a compulsory-school-age child.

147 (f) An absence is excused when it results from the
148 attendance of a compulsory-school-age child at the proceedings of
149 a court or an administrative tribunal if the child is a party to
150 the action or under subpoena as a witness.

151 (g) An absence may be excused if the religion to which
152 the compulsory-school-age child or the child's parents adheres,
153 requires or suggests the observance of a religious event. The
154 approval of the absence is within the discretion of the
155 superintendent of the school district, or his designee, but
156 approval should be granted unless the religion's observance is of
157 such duration as to interfere with the education of the child.

158 (h) An absence may be excused when it is demonstrated
159 to the satisfaction of the superintendent of the school district,
160 or his designee, that the purpose of the absence is to take
161 advantage of a valid educational opportunity such as travel,
162 including vacations or other family travel. Approval of the
163 absence must be gained from the superintendent of the school
164 district, or his designee, before the absence, but the approval
165 shall not be unreasonably withheld.

166 (i) An absence may be excused when it is demonstrated
167 to the satisfaction of the superintendent of the school district,
168 or his designee, that conditions are sufficient to warrant the
169 compulsory-school-age child's nonattendance. However, no absences



170 shall be excused by the school district superintendent, or his
171 designee, when any student suspensions or expulsions circumvent
172 the intent and spirit of the compulsory attendance law.

173 (j) An absence is excused when it results from the
174 attendance of a compulsory-school-age child participating in
175 official organized events sponsored by the 4-H or Future Farmers
176 of America (FFA). The excuse for the 4-H or FFA event must be
177 provided in writing to the appropriate school superintendent by
178 the Extension Agent or High School Agricultural Instructor/FFA
179 Advisor.

180 (k) An absence is excused when it results from the
181 compulsory-school-age child officially being employed to serve as
182 a page at the State Capitol for the Mississippi House of
183 Representatives or Senate.

184 (5) Any parent, guardian or custodian of a
185 compulsory-school-age child subject to this section who refuses or
186 willfully fails to perform any of the duties imposed upon him or
187 her under this section or who intentionally falsifies any
188 information required to be contained in a certificate of
189 enrollment, shall be guilty of contributing to the neglect of a
190 child and, upon conviction, shall be punished in accordance with
191 Section 97-5-39.

192 Upon prosecution of a parent, guardian or custodian of a
193 compulsory-school-age child for violation of this section, the
194 presentation of evidence by the prosecutor that shows that the



195 child has not been enrolled in school within eighteen (18)
196 calendar days after the first day of the school year of the public
197 school which the child is eligible to attend, or that the child
198 has accumulated twelve (12) unlawful absences during the school
199 year at the public school in which the child has been enrolled,
200 shall establish a prima facie case that the child's parent,
201 guardian or custodian is responsible for the absences and has
202 refused or willfully failed to perform the duties imposed upon him
203 or her under this section. However, no proceedings under this
204 section shall be brought against a parent, guardian or custodian
205 of a compulsory-school-age child unless the school attendance
206 officer has contacted promptly the home of the child and has
207 provided written notice to the parent, guardian or custodian of
208 the requirement for the child's enrollment or attendance.

209 (6) If a compulsory-school-age child has not been enrolled
210 in a school within fifteen (15) calendar days after the first day
211 of the school year of the school which the child is eligible to
212 attend or the child has accumulated five (5) unlawful absences
213 during the school year of the public school in which the child is
214 enrolled, the school district superintendent, or his designee,
215 shall report, within two (2) school days or within five (5)
216 calendar days, whichever is less, the absences to the school
217 attendance officer. The State Department of Education shall
218 prescribe a uniform method for schools to utilize in reporting the
219 unlawful absences to the school attendance officer. The



220 superintendent, or his designee, also shall report any student
221 suspensions or student expulsions to the school attendance officer
222 when they occur.

223 (7) When a school attendance officer has made all attempts
224 to secure enrollment and/or attendance of a compulsory-school-age
225 child and is unable to effect the enrollment and/or attendance,
226 the attendance officer shall file a petition with the youth court
227 under Section 43-21-451 or shall file a petition in a court of
228 competent jurisdiction as it pertains to parent or child.

229 Sheriffs, deputy sheriffs and municipal law enforcement officers
230 shall be fully authorized to investigate all cases of
231 nonattendance and unlawful absences by compulsory-school-age
232 children, and shall be authorized to file a petition with the
233 youth court under Section 43-21-451 or file a petition or
234 information in the court of competent jurisdiction as it pertains
235 to parent or child for violation of this section. The youth court
236 shall expedite a hearing to make an appropriate adjudication and a
237 disposition to ensure compliance with the Compulsory School
238 Attendance Law, and may order the child to enroll or re-enroll in
239 school. The superintendent of the school district to which the
240 child is ordered may assign, in his discretion, the child to the
241 alternative school program of the school established pursuant to
242 Section 37-13-92.

243 (8) The State Board of Education shall adopt rules and
244 regulations for the purpose of reprimanding any school



245 superintendents who fail to timely report unexcused absences under
246 the provisions of this section.

247 (9) Notwithstanding any provision or implication herein to
248 the contrary, it is not the intention of this section to impair
249 the primary right and the obligation of the parent or parents, or
250 person or persons in loco parentis to a child, to choose the
251 proper education and training for such child, and nothing in this
252 section shall ever be construed to grant, by implication or
253 otherwise, to the State of Mississippi, any of its officers,
254 agencies or subdivisions any right or authority to control,
255 manage, supervise or make any suggestion as to the control,
256 management or supervision of any private or parochial school or
257 institution for the education or training of children, of any kind
258 whatsoever that is not a public school according to the laws of
259 this state; and this section shall never be construed so as to
260 grant, by implication or otherwise, any right or authority to any
261 state agency or other entity to control, manage, supervise,
262 provide for or affect the operation, management, program,
263 curriculum, admissions policy or discipline of any such school or
264 home instruction program.

265 **SECTION 2.** Section 37-151-5, Mississippi Code of 1972, is
266 amended as follows:

267 37-151-5. As used in Sections 37-151-5 and 37-151-7:

268 (a) "Adequate program" or "adequate education program"
269 or "Mississippi Adequate Education Program (MAEP)" shall mean the



270 program to establish adequate current operation funding levels
271 necessary for the programs of such school district to meet at
272 least a successful Level III rating of the accreditation system as
273 established by the State Board of Education using current
274 statistically relevant state assessment data.

275 (b) "Educational programs or elements of programs not
276 included in the adequate education program calculations, but which
277 may be included in appropriations and transfers to school
278 districts" shall mean:

279 (i) "Capital outlay" shall mean those funds used
280 for the constructing, improving, equipping, renovating or major
281 repairing of school buildings or other school facilities, or the
282 cost of acquisition of land whereon to construct or establish such
283 school facilities.

284 (ii) "Pilot programs" shall mean programs of a
285 pilot or experimental nature usually designed for special purposes
286 and for a specified period of time other than those included in
287 the adequate education program.

288 (iii) "Adult education" shall mean public
289 education dealing primarily with students above eighteen (18)
290 years of age not enrolled as full-time public school students and
291 not classified as students of technical schools, colleges or
292 universities of the state.



293 (iv) "Food service programs" shall mean those
294 programs dealing directly with the nutritional welfare of the
295 student, such as the school lunch and school breakfast programs.

296 (c) "Base student" shall mean that student
297 classification that represents the most economically educated
298 pupil in a school system meeting the definition of successful, as
299 determined by the State Board of Education.

300 (d) "Base student cost" shall mean the funding level
301 necessary for providing an adequate education program for one (1)
302 base student, subject to any minimum amounts prescribed in Section
303 37-151-7(1).

304 (e) "Add-on program costs" shall mean those items which
305 are included in the adequate education program appropriations and
306 are outside of the program calculations:

307 (i) "Transportation" shall mean transportation to
308 and from public schools for the students of Mississippi's public
309 schools provided for under law and funded from state funds.

310 (ii) "Vocational or technical education program"
311 shall mean a secondary vocational or technical program approved by
312 the State Department of Education and provided for from state
313 funds.

314 (iii) "Special education program" shall mean a
315 program for exceptional children as defined and authorized by
316 Sections 37-23-1 through 37-23-9, and approved by the State
317 Department of Education and provided from state funds.



318 (iv) "Gifted education program" shall mean those
319 programs for the instruction of intellectually or academically
320 gifted children as defined and provided for in Section 37-23-175
321 et seq.

322 (v) "Alternative school program" shall mean those
323 programs for certain compulsory-school-age students as defined and
324 provided for in Sections 37-13-92 and 37-19-22.

325 (vi) "Extended school year programs" shall mean
326 those programs authorized by law which extend beyond the normal
327 school year.

328 (vii) "University-based programs" shall mean those
329 university-based programs for handicapped children as defined and
330 provided for in Section 37-23-131 et seq.

331 (viii) "Bus driver training" programs shall mean
332 those driver training programs as provided for in Section 37-41-1.

333 (f) "Teacher" shall include any employee of a local
334 school who is required by law to obtain a teacher's license from
335 the State Board of Education and who is assigned to an
336 instructional area of work as defined by the State Department of
337 Education.

338 (g) "Principal" shall mean the head of an attendance
339 center or division thereof.

340 (h) "Superintendent" shall mean the head of a school
341 district.



342 (i) "School district" shall mean any type of school
343 district in the State of Mississippi, and shall include
344 agricultural high schools.

345 (j) "Minimum school term" shall mean a term of at least
346 one hundred eighty (180) days of school in which both teachers and
347 pupils are in regular attendance for scheduled classroom
348 instruction for not less than * * * fifty percent (50%) of the
349 instructional day, as fixed by the local school board for each
350 school in the school district. It is the intent of the
351 Legislature that any tax levies generated to produce additional
352 local funds required by any school district to operate school
353 terms in excess of one hundred seventy-five (175) days shall not
354 be construed to constitute a new program for the purposes of
355 exemption from the limitation on tax revenues as allowed under
356 Sections 27-39-321 and 37-57-107 for new programs mandated by the
357 Legislature.

358 (k) The term "transportation density" shall mean the
359 number of transported children in average daily attendance per
360 square mile of area served in a school district, as determined by
361 the State Department of Education.

362 (l) The term "transported children" shall mean children
363 being transported to school who live within legal limits for
364 transportation and who are otherwise qualified for being
365 transported to school at public expense as fixed by Mississippi
366 state law.



367 (m) The term "year of teaching experience" shall mean
368 nine (9) months of actual teaching in the public or private
369 elementary and secondary schools and shall also include nine (9)
370 months of actual teaching at postsecondary institutions accredited
371 by the Southern Association of Colleges and Schools (SACS) or
372 equivalent regional accrediting body for degree-granting
373 postsecondary institutions. In no case shall more than one (1)
374 year of teaching experience be given for all services in one (1)
375 calendar or school year. In determining a teacher's experience,
376 no deduction shall be made because of the temporary absence of the
377 teacher because of illness or other good cause, and the teacher
378 shall be given credit therefor. Beginning with the 2003-2004
379 school year, the State Board of Education shall fix a number of
380 days, not to exceed forty-five (45) consecutive school days,
381 during which a teacher may not be under contract of employment
382 during any school year and still be considered to have been in
383 full-time employment for a regular scholastic term. If a teacher
384 exceeds the number of days established by the State Board of
385 Education that a teacher may not be under contract but may still
386 be employed, that teacher shall not be credited with a year of
387 teaching experience. In determining the experience of school
388 librarians, each complete year of continuous, full-time employment
389 as a professional librarian in a public library in this or some
390 other state shall be considered a year of teaching experience. If
391 a full-time school administrator returns to actual teaching in the



392 public schools, the term "year of teaching experience" shall
393 include the period of time he or she served as a school
394 administrator. In determining the salaries of teachers who have
395 experience in any branch of the military, the term "year of
396 teaching experience" shall include each complete year of actual
397 classroom instruction while serving in the military. In
398 determining the experience of speech-language pathologists and
399 audiologists, each complete year of continuous full-time post
400 master's degree employment in an educational setting in this or
401 some other state shall be considered a year of teaching
402 experience. Provided, however, that school districts are
403 authorized, in their discretion, to negotiate the salary levels
404 applicable to certificated employees employed after July 1, 2009,
405 who are receiving retirement benefits from the retirement system
406 of another state, and the annual experience increment provided in
407 Section 37-19-7 shall not be applicable to any such retired
408 certificated employee.

409 (n) * * * The term "average daily attendance" shall be
410 the figure which results when the total aggregate full-day
411 attendance during the period or months counted is divided by the
412 number of days during the period or months counted upon which both
413 teachers and pupils are in regular attendance for scheduled
414 classroom instruction, * * * less the average daily attendance for
415 self-contained special education classes. For purposes of
416 determining and reporting attendance, a pupil must be present for



417 at least * * * fifty percent (50%) of the instructional day, as
418 fixed by the local school board for each school in the school
419 district, in order to be considered in full-day attendance. Prior
420 to full implementation of the adequate education program the
421 department shall deduct the average daily attendance for the
422 alternative school program provided for in Section 37-19-22.

423 * * *

424 (o) The term "local supplement" shall mean the amount
425 paid to an individual teacher over and above the adequate
426 education program salary schedule for regular teaching duties.

427 (p) The term "aggregate amount of support from ad
428 valorem taxation" shall mean the amounts produced by the
429 district's total tax levies for operations.

430 (q) The term "adequate education program funds" shall
431 mean all funds, both state and local, constituting the
432 requirements for meeting the cost of the adequate program as
433 provided for in Section 37-151-7.

434 (r) "Department" shall mean the State Department of
435 Education.

436 (s) "Commission" shall mean the Mississippi Commission
437 on School Accreditation created under Section 37-17-3.

438 (t) The term "successful school district" shall mean a
439 Level III school district as designated by the State Board of
440 Education using current statistically relevant state assessment
441 data.



442 (u) "Dual enrollment-dual credit programs" shall mean
443 programs for potential or recent high school student dropouts to
444 dually enroll in their home high school and a local community
445 college in a dual credit program consisting of high school
446 completion coursework and a credential, certificate or degree
447 program at the community college, as provided in Section
448 37-15-38(19).

449 (v) "Charter school" means a public school that is
450 established and operating under the terms of a charter contract
451 between the school's governing board and the Mississippi Charter
452 School Authorizer Board.

453 **SECTION 3.** This act shall take effect and be in force from
454 and after July 1, 2018.

